

Testimony of Melvin Butch Hollowell
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Redistricting Committee

Michigan State Senate

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Good afternoon Mr. Chairman. I would like to take this opportunity to thank you and the Members of the Senate Redistricting Committee for inviting me to provide testimony to this body on the application of the Voting Rights Act of 1965 (42 U.S.C. Sections 1973-1973aa-6) to the state's legislative redistricting process.

I am appearing today in my capacity as Counsel to the Michigan Legislative Black Caucus, which represents twenty two (22) Members of the Michigan State Legislature. I would like to acknowledge Caucus Chair Fred Durhal, as well as Senators Bert Johnson and Virgil Smith, Members of this Committee, and my co-counsel in this matter, Alan Canady.

As an overview, the newly-released census figures indicate that America is a more diverse nation. And likewise, Michigan - though smaller - is a more diverse state. While Michigan's overall population declined over the past 10 years (the only state to lose population) its minority population percentage increased significantly during this period, from 21.4% in 2000, to 23.4% in 2010.

The position of the Michigan Legislative Black Caucus is that these significant gains in the state's minority population should be reflected in the maps that are drawn in this redistricting process.

These gains in diversity look different than they did in the past. More people of color now live in the suburbs and in West Michigan. No longer is there just a concentration in our city centers. Voters of color moved across the street and across the state.

For example, between 2000 and 2010 there was a 389% increase in the number of African-Americans living in Warren, a 496% increase in Eastpointe, and a 260% increase in Melvindale. Western Michigan saw similar gains. In Grand Rapids the Hispanic population increased by 13.3%. In Wyoming the Hispanic population increased 109% and the African-American population increased by 48.4%. The same is true in Kentwood, which saw a 135% increase in its Hispanic population, and an 80% increase in the number of African-American residents.

All of this has implications under the Voting Rights Act. The 1965 Voting Rights Act was passed by Congress and signed into law by President Lyndon B. Johnson just weeks after the attacks on men women and children, as they crossed Selma, Alabama's Edmund Pettis Bridge, in March of 1965, to peacefully protest laws aimed at disenfranchising African American voters. This law, a cornerstone of the American civil rights movement, is credited with giving millions access to the ballot and full participation in the democratic process.

In 2006 the Act was re-authorized for 25 years (until 2031) by Congress and signed into law by President George W. Bush. I was in attendance at the NAACP National Convention in Washington, D.C. that day, when President Bush made the announcement to those of us gathered in the Hall at the Washington Convention Center, that he would be signing the landmark legislation.

Section 2 of the Act is at the core of protecting minority voting rights in the redistricting process. In essence, Section 2 provides that minority voting strength is not to be diluted in the drawing of district boundaries. Based on the totality of circumstances, a Section 2 violation arises if it can be shown that district lines were drawn to limit the chances of minorities to elect candidates of their choosing. The 1982 Amendments to Section 2 provide that the courts are to strike down district lines that are drawn with either a racially discriminatory intent or effect. (42 U.S.C. Section 1973(a)(2000 ed.)).

As a general rule, minority vote dilution occurs when African-Americans are put in a district where the majority votes as a bloc to cancel out or minimize the effectiveness of minority voters.

Section 5 of the Voting Rights Act, which is known as the "Pre-clearance" provision, is also extremely important in the redistricting process. This section of the Act applies to certain states with a history of discrimination, called "Covered Jurisdictions," and provides that in these Covered Jurisdictions, any major changes to laws which affect voting rights, such as the drawing of redistricting maps, must be submitted to the Attorney General of the United States for his or her prior approval. Michigan has two such Covered Jurisdictions: Clyde Township in Allegan County and Buena Vista Township in Saginaw County.

The State of Michigan initiates the Section 5 Pre-clearance process by submitting a letter notifying the Attorney General of the proposed change, and requesting approval of same. The United States Department of Justice then conducts a review process which examines the proposed changes and allows for public comment and input, before making a determination of whether the proposed changes are consistent with the Voting Rights Act.

In this process, the burden is on the Covered Jurisdiction to show that the new law does not have a "retrogressive" or discriminatory effect on minority voting rights. The Attorney General has sixty (60) days to respond to the request. If the request is denied, the proposed changes are barred from taking effect. There is no

appeal. The other option available to the Covered Jurisdiction is to request a judicial review of the proposed changes from a special panel of the United States District Court for the District of Columbia.

At this point, I thought it might be helpful to address a few of the questions that were posed to myself and co-counsel during the House Redistricting Committee's April 26 hearing on this matter.

Question: Is there a legal requirement that the Legislature create majority African-American districts?

Section 2 of the Voting Rights Act includes a requirement that African-American voting strength not be diluted in the drawing of district lines to ensure that minority voters have the opportunity to elect a candidate of their choosing. Furthermore, when there has been an increase in the minority population, as we have seen here in Michigan, the courts have consistently invalidated map boundaries which are drawn to "pack" too many voters of color into one district, and they have invalidated map boundaries that are drawn to unfairly divide voters of color into separate districts: a practice which is called "cracking."

Question: Is the Legislature required to create as many majority African-American districts as possible?

The United States Supreme Court in *Miller v. Johnson*, 515 U.S. 115 (1995) ruled that race cannot be the pre-dominant factor in drawing district boundaries. However, the High Court has also ruled, in *Shaw v. Reno*, 509 U.S. 630 (1993) that race is an important factor, among other factors, in the drawing of district maps, so long as it is not the pre-dominant factor. The bottom line is that the Michigan Legislature *cannot not* consider race when drawing district boundaries in light of the Voting Rights Act.

Some of the race-neutral factors which can and should be considered are (1) communities of common interest, (2) political party affiliations, (3) connections to faith-based institutions, (4) socio-economic levels, (5) networks of community-based organizations, block clubs, and neighborhood associations, (6) ethnic communities, (7) cultural associations and interests, (8) common interests in legislation or issues, and (9) as far as the City of Detroit goes, the need to preserve a strong voice for the largest city in the state - with a population of 713,777 - as a matter of public policy.

Question: What percentage of African-Americans should a district have to give minorities a reasonable chance to elect a candidate of their choice?

While it is difficult to give a precise percentage, at least three (3) factors must be employed: (1) The percentage of African-Americans within the proposed district, (2) the percentage of African-American registered voters in the proposed district, and (3) the voter turn-out rates in the proposed district. If registration levels and historic turn-out rates are low, the percentage above fifty percent (50%) will need to be adjusted up-ward. As a practical matter, in the neighborhood of sixty percent (60%) is probably close, though the state will need to consult with statistical experts.

Question: Where in the state, other than Detroit, can majority-minority districts be created?

Outside of the City of Detroit and its adjacent suburbs with significant African-American populations, so-called "Opportunity Districts" can be drawn in Pontiac, Flint, Saginaw, and Grand Rapids.

Question: State law says that county, city and township boundaries should not be broken. Is the creation of majority African-American districts a justification for breaking political subdivision boundaries?

Yes. The creation of majority-minority districts is a justification under the Voting Rights Act where supported by population. The requirements of Federal law always trump state law requirements like contiguity (adjacency), political boundaries and compactness.

Fortunately, in Michigan there is no conflict in light of the provisions in our state's very progressive redistricting statute. MCL Sections 3.54(c) and (d) specifically requires the application of the Voting Rights Act, and the equal protection clauses of the XIV Amendments to the Federal and state constitutions. With the exception of California, which has its own Voting Rights Act, and New York which has excellent voter protections, Michigan's statute is fairly unique in the country.

Question: Are there any parts of the state where Hispanic or other minority districts be created?

Yes. There is the potential for such districts to be created in Southwest Detroit, Dearborn, Flint, and Grand Rapids.

Question: Is evidence of racial bloc voting necessary before majority African-American districts can be created?

No. Not at the map-drawing stage that we are in presently. Majority African-American districts can be created as a reflection of the African-American population.

Mr. Chairman, this concludes my testimony. And again, on behalf of the Black Caucus, thank you for the opportunity to address the committee.